UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,698	01/22/2001	Alan W. H. Grant	48971-023 (AWGK-001)	1729

7590 09/15/2005	EXAMINER
McDermott Will & Emery	THAI, CANG G
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	ART UNIT	PAPER NUMBER
Boston, MA 02109-1775	3629	

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/766,698	GRANT, ALAN W. H.
	Examiner	Art Unit	
	Cang G. Thai	3629	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 June 2005*.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The amendment filed 06/15/2005 has been entered.

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claims 1-3, 5 & 6, 4, and 7-8 are rejected under 35 U.S.C. 102(b) as being

anticipated by U.S. Patent No. 5,577,169 (PREZIOSO).

As for Claim 1, PREZIOSO discloses a method of quantifying the value of a

constituent population of an entity to the entity the method comprising a set of steps

embodied in computer code configured for execution by at least one processor having

access to at least one memory, the steps comprising:

A)   identifying a number of exchange elements which are offered to the constituent

population by the entity {Column 5, Lines 36-37, wherein this reads over

identifying subject peer group to be profiled"};

B)   associating a cost to the entity with each of exchange elements in the at least

one memory {Column 5, Lines 41-43, wherein this reads over "each behavior

characteristic that will measure membership of an entity based on an amount of

behavior characteristics"};

C)   summing the exchange element cost to the entity for constituent population to

obtain a total exchange element cost, and storing the total exchange element

cost {See Fig. 4, Element 490 – Calculate and store behavior characteristic

values for each entity};

D)   identifying a number of behaviors of constituent population {Element 420 –

Identify Characteristic of Target Behavior};

E)   associating a value with each of behaviors in the at least one memory {Element

430 – Determine Algorithms for Quantifying Behavior Characteristics};

F)   summing the value of the behaviors associated with the constituent population to

obtain a total behavior value, and storing the total behavior value {Element 490 –

Calculate and Store Behavior Characteristic Values for Each Entity}; and

G)   quantifying the value contributed to entity by constituent population by

subtracting the total exchange element cost from the total behavior value

{Column 26, Lines 55-59, wherein this reads over "selecting a subset of entities

in the peer group based on the amount of the target behavior exhibited. This

process involves an evaluation of what amount of target behavior is actionable in

a way contemplated by the process described in the Element 410 (Identify Target

Behavior)"}.

As for Claim 2, PREZIOSO discloses further comprising:

H)   determining an experience of constituent to at least one of exchange elements

offered by entity and represented by data indicative of the exchange elements

{Column 9, Lines 12-14, wherein this reads over "determine the algorithms for quantifying behavior characteristics or indicators of the target behavior"};

I)   obtaining <u>mindset</u> data relative to constituent's mindset regarding experience {Column 9, Lines 38-41, wherein this reads over "data elements identified in the algorithms for quantifying each behavior characteristic are determined to be available in a format and operating environment compatible with the system"};

J)   constructing at least one value exchange gap based on said <u>mindset</u> data {Column 9, Lines 43-48, wherein this reads over "data required to calculate a given behavior characteristic is determined to be unavailable or unusable, the behavior characteristic requiring the unavailable data will need to be modified to conform with more readily available data, or steps must be taken to make the required data available"};

K) ·   determining behaviors of constituent which result from experience and mindset data {Column 7, Lines 24-28, wherein this reads over "data used to profile physicians and other peer groups in health care is generally health claims billing data that is commonly available in private health insurance companies and in government agencies responsible for administering public health care programs such as Medicare"};

L)   linking <u>data indicative of</u> particular exchange elements to particular resulting behavior of constituent {Column 7, Lines 13-15, wherein this reads over "a key element of the data used in profiling a peer group is that it be organized, or be organizable, according to the definition of the peer group"}; and

M)   adjusting said <u>data indicative of</u> exchange elements to cause constituent to

exhibit behaviors which are more valuable to the entity than previous behaviors

{Column 3, Lines 13-16, wherein this reads over "improved system and method

that is expandable in that behavior characteristics of an entity can be added

without restriction, to determine the behavior profile"}.

As for Claim 3, PREZIOSO discloses further <u>comprising adjusting the exchange</u>

<u>elements and</u> tracking the value <u>contributed</u> to said entity over time {Column 3, Lines 1-

4, wherein this reads over "complex behavior profiling requires a solution that is flexible,

extensible, domain independent, and can be routinely implemented in varying types of

computing environment with commonly available skills"}.

As for Claim <u>4</u>, PREZIOSO discloses a method of modeling behaviors of a

constituent with an entity <u>offering exchange elements, the method comprising a set of</u>

<u>steps embodied in computer code configured for execution by at least one processor</u>

<u>having access to at least one memory, the steps</u> comprising:

A)   determining an experience of constituent to an exchange element offered by said

entity <u>and represented by data indicative of the exchange element</u> {Column 7,

Lines 24-28, wherein this reads over "data used to profile physicians and other

peer groups in health care is generally health claims billing data that is commonly

available in private health insurance companies and in government agencies

responsible for administering public health care programs such as Medicare"};

B)   obtaining <u>and storing mindset</u> data <u>indicative of a</u> mindset <u>of said constituent</u>

regarding experience {Column 9, Lines 38-41, wherein this reads over "data

elements identified in the algorithms for quantifying each behavior characteristic

are determined to be available in a format and operating environment compatible

with the system"};

C)   associating one or more value exchange gaps with said mindset data, the one or

more value exchange gaps representing a value difference between what is

expected by the constituent and what is offered by the entity for the experience

{Column 9, Lines 12-14, wherein this reads over "determine the algorithms for

quantifying behavior characteristics or indicators of the target behavior"};

D)   determining a set of behaviors of constituent which results from experience and

mindset data, and storing data indicative the set of behaviors in the at least one

memory {Column 7, Lines 24-28, wherein this reads over "data used to profile

physicians and other peer groups in health care is generally health claims billing

data that is commonly available in private health insurance companies and in

government agencies responsible for administering public health care programs

such as Medicare"}; and

E)   linking the data indicative of the exchange elements to the data indicative of the

set of behaviors of constituent {Column 7, Lines 13-15, wherein this reads over

"a key element of the data used in profiling a peer group is that it be organized,

or be organizable, according to the definition of the peer group"}.

As for Claim 5, PREZIOSO discloses the method of claim 4 further comprising:

F)   associating a exchange element costs to the entity with data indicative of said

exchange elements {Column 5, Lines 41-43, wherein this reads over "each

behavior characteristic that will measure membership of an entity based on an

amount of behavior characteristics"};

G)   summing the exchange element cost to the entity for constituent to obtain a total

exchange element cost {Element 2660 – Determine Amount / Degree of

Membership in Each Behavior Characteristic for Each Entity};

H)   associating a value with each of behaviors {Element 430 – Determine Algorithms

for Quantifying Behavior Characteristics};

I)   summing the value of the behaviors associated with constituent to obtain a total

behavior value {Element 490 – Calculate and Store Behavior Characteristic

Values for Each Entity}; and

J)   quantifying a value contributed to entity by constituent by subtracting the total

exchange element cost from the total behavior value {Column 26, Lines 55-59,

wherein this reads over "selecting a subset of entities in the peer group based on

the amount of the target behavior exhibited. This process involves an evaluation

of what amount of target behavior is actionable in a way contemplated by the

process described in the Element 410 (Identify Target Behavior)"}.

As for Claim 6, PREZIOSO discloses the method of claim 5 further comprising

adjusting the exchange elements and tracking the value contributed to said entity over

time {Column 7, Lines 6-9, wherein this reads over "business unit performance data can

be obtained from corporate computer system including general ledger, accounting

systems, auditing systems and other similar business systems"}.

As for Claim 7, PREZIOSO discloses a method of optimizing the value of an entity, the method comprising a set of steps embodied in computer code configured for execution by at least one processor, the steps comprising:

A)   storing in at least one memory exchange element data identifying a set of exchange elements which are offered to a constituent by the entity {Column 5, Lines 36-37, wherein this reads over identifying subject peer group to be profiled"};

B)   associating exchange element a cost to the entity with said exchange element data {Column 5, Lines 41-43, wherein this reads over "each behavior characteristic that will measure membership of an entity based on an amount of behavior characteristics"};

C)   summing the exchange element costs to the entity for constituent to obtain a total exchange element cost {Element 2660 – Determine Amount / Degree of Membership in Each Behavior Characteristic for Each Entity};

D)   identifying a number of behaviors of constituent {Element 420 - Identify Characteristic of Target Behavior};

E)   associating a value with each of behaviors {Element 430 – Determine Algorithms for Quantifying Behavior Characteristics};

F)   summing the value of the behaviors associated with the constituent to obtain a total behavior value {Element 490 – Calculate and Store Behavior Characteristic Values for Each Entity};

G)   quantifying the value contributed to entity by constituent by subtracting the total

exchange element cost from the total behavior value {Column 26, Lines 55-59,

wherein this reads over "selecting a subset of entities in the peer group based on

the amount of the target behavior exhibited. This process involves an evaluation

of what amount of target behavior is actionable in a way contemplated by the

process described in the Element 410 (Identify Target Behavior)"};

H)   determining an experience of constituent to at least one of exchange elements

offered by said entity and represented by data indicative of the exchange

elements {Column 9, Lines 12-14, wherein this reads over "determine the

algorithms for quantifying behavior characteristics or indicators of the target

behavior"};

I)   obtaining mindset data relative to constituent's mindset regarding experience

{Column 9, Lines 38-41, wherein this reads over "data elements identified in the

algorithms for quantifying each behavior characteristic are determined to be

available in a format and operating environment compatible with the system"};

J)   identifying one or more value exchange gaps based on said mindset data

{Column 9, Lines 12-14, wherein this reads over "determine the algorithms for

quantifying behavior characteristics or indicators of the target behavior"};

K)   determining behaviors of constituent which result from experience and mindset

data {Column 7, Lines 24-28, wherein this reads over "data used to profile

physicians and other peer groups in health care is generally health claims billing

data that is commonly available in private health insurance companies and in

government agencies responsible for administering public health care programs such as Medicare"};

L)   linking <u>data indicative of</u> particular exchange elements to <u>data indicative of</u> particular resulting behaviors of constituent {Column 7, Lines 13-15, wherein this reads over "a key element of the data used in profiling a peer group is that it be organized, or be organizable, according to the definition of the peer group"}; and

M)   adjusting said <u>data indicative of</u> exchange elements to cause constituent to exhibit behaviors which are more valuable to the entity than previous behaviors {Column 3, Lines 13-16, wherein this reads over "improved system and method that is expandable in that behavior characteristics of an entity can be added without restriction, to determine the behavior profile"}.

As for Claim 8, which has same limitation as in Claim 3, therefore it is rejected for the similar reasons set forth in Claim 3.

Response to Arguments

3.   Applicant's arguments filed 06/15/2005 have been fully considered but they are not persuasive.

PREZIOSO teaches the value quantification or adjustment to improve the value of the constituent to the entity in Fig. 2, Element 220.

Conclusion

4.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cang (James) G. Thai whose telephone number is (571) 272-6499. The examiner can normally be reached on 6:30 AM - 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CGT
09/02/2005

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